



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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July 18, 1995

BURTON W. OLIVER
Executive Director

Dear Ms.

This is in response to your June 14, 1995, letter concerning the Conference Center C (Ministries) owns and operates in San Juan Capistrano, California. You state that Ministries has many group requests to use the facility, but that you are aware that to be able to retain the tax exempt status for the facility, Ministries must exercise care when permitting outside groups' use of it. Thus, you ask if there is some sort of guideline that can be provided to Ministries that will allow it to determine with some certainty what outside groups might use its facility without interfering with the facility's property tax exemption.

As you know, Revenue and Taxation Code, Section 214 states that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from property taxation if certain requirements are met. As construed by the court in *Christ The Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 Cal. App. 3d 355, "'owned and operated' by community chests, funds, foundations or corporations" as used in Section 214 "reflects the dual constitutional requirements that the property must be both owned and operated by welfare organizations in order to qualify for the exemption." Thus, if one organization owns the property and another organization uses the property, both must file claims for the exemption, both must meet all the requirements for exemption, and the property must be used by one or both for qualifying purposes and activities. In this latter regard, page 7 of the advisory Assessor's Handbook AH 267, Welfare Exemption, provides the following example:

"The property will not be exempt unless the owner and operator meet the specific requirements of Section 214. Usually the owner and operator are one and the same, and the filing of one claim will suffice. Section 214 does not require that the owner and the operator of the property be the same legal entity, however, (*Christ the Good Shepherd Lutheran Church v. Mathiesen*, 81 Cal.App. 3d 355), but if property is owned by one exempt organization and operated by another exempt organization, each must file a claim for exemption.

"If the operator is not an exempt organization, the portion of the owner's property used by the operator is not eligible for the exemption..."

Thus, it has been and remains staff's position that both owners and operators of properties for which the welfare exemption is claimed must be qualifying organizations organized and operated for religious, hospital, scientific, or charitable purposes and must meet all of the requirements of Section 214 et seq. before the exemption can be granted. In addition, Article XIII, Section 4(b) of the California Constitution specifically limits the exemption's availability to organizations that are nonprofit.

As to when organizations using properties owned by exempt organizations are considered to be operators of the properties, staff has been of the opinion that organizations using properties on a regular basis, such as daily, weekly, bi-weekly, or even monthly, can be operators of the properties, depending on the particular circumstances. For example, an organization using property daily would be regarded as an operator, as would an organization using property monthly several days each month. Similarly, staff has been of the opinion that organizations using properties on extended bases, such as a several days, a week, or several weeks at a time, can be operators of the properties, again depending on the particular circumstances. For example, an organization using property two or three days a month every quarter would be regarded as an operator.

As is evident, such is a matter of statutory interpretation; and in many instances, determinations as to whether organizations using properties of exempt organizations are operators thereof are, of necessity, made on a case-by-case basis.

As to uses of properties of exempt organizations by other exempt organizations on a one-time basis or on an infrequent basis, staff has not regarded those organizations using the properties as operators of the properties. For example, an

organization using property once a year for part of a day or a day or using the property several times a year for limited periods on an irregular basis would not be regarded as an operator of the property and would not have to file a claim for exemption as an operator.

Again, such is a matter of statutory interpretation, and such determinations also are made on a case-by-case basis. All such organizations using the properties of exempt organizations, however, still must meet all the requirements for exemption, and the property must be used by the exempt organizations for qualifying purposes and activities.

Finally, as also indicated in the June 7, 1995, letter to Mr. Charles J. Todd, Section 214, subdivision (a)(3) was amended in 1990 to provide that for purposes of determining whether property is used for the actual operation of the exempt activity, consideration shall not be given to the use of property for meetings conducted by any other organization, if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities, are not held more than once per week, and the other organization and its use of the property meet the requirements of Section 214, subdivision (a)(1)-(5). The owner of the property or the other organization, however, must file copies of valid, unrevoked letters or rulings from the Internal Revenue Service or Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501 (c)(3) or Section 501 (c)(4) of the Internal Revenue Code or Section 23701d or 23701f of the Revenue and Taxation Code, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

Thus, uses of property for meetings conducted by other organizations are not considered in determining whether property is used for the actual operation of exempt activities if the above requirements are met. For example, if Ministries permitted the use of a portion of its Conference Center for meetings conducted by a nonprofit organization such as the Association of American Retired Persons (AARP), a non-profit organization, and AARP used it for its meetings not more than weekly, did not use it for fundraising meetings or activities, met the requirements of Section 214, subdivision (a)(1)-(5), filed copies of valid, unrevoked letters or rulings from the IRS or Franchise Tax Board stating that it (or the national organization of which it is an affiliate), qualified as an exempt organization under Internal Revenue Code Section 501

¹As to use of property for fundraising, see Mr. E. L. Sorensen's June 7, 1995, letter to Mr. Charles J. Todd, in this regard.

(c)(3) or 501 (c)(4) or Revenue and Taxation Code Section 23701d or 23701f, and filed duplicate copies of its most recently filed federal income tax return, (if required by federal law to file one), the use of the Conference Center for meetings by AARP would not be considered (Section 214, subdivision (a)(3)(D)).

Conversely, making the Conference Center available to nonprofit organizations that do not meet all the requirements for exemption or to for-profit organizations, which also do not meet all the requirements for exemption, would result in loss of the exemption for that portion or portions of the Center used by such organizations.

To answer your specific questions then, generally, only nonprofit organizations that are religious, hospital, scientific and/or charitable are the types of organizations that can use the Conference Center without interfering with the Center's property tax exemption. However, they must meet all the requirements for exemption in order for the Center to remain completely eligible for the exemption. Additional nonprofit organizations that meet the requirements of Section 214(a)(3)(D) can use the Conference Center without interfering with the exemption.

Ministries can allow other nonprofit religious, hospital, scientific or charitable organizations to use the Conference Center on their own, or it can jointly use it with such organizations. In either event, however, the other organizations must meet all the requirements for exemption in order for such operations and uses of the Center to not interfere with the exemption. Sponsoring an event with a nonqualifying organization that uses the Center would most likely result in that portion of the Center used being found ineligible for the exemption.

Finally, an Olympic soccer team could use the Conference Center without interfering with the exemption if it is or is part of a nonprofit organization that is charitable and meets all the requirements for exemption, or if it meets the requirements of Section 214(a)(3)(D) or is part of an Olympic organization that is a nonprofit organization that meets the requirements of Section 214(a)(3)(D). Lacking any information in these regards, we cannot and do not make any determination in this specific circumstance.

As you know, the welfare exemption requires an annual filing by the claimant with annual review by this Board and the County Assessor. Until such time as a claim or claims for exemption and all supporting documents are filed and reviewed by the Board's staff, we cannot make any final determinations.

July 18 1995

Since the Assessor may deny the claim of an applicant the Board finds eligible for the exemption (Revenue and Taxation Code Section 254.5), you may wish to also obtain the opinion of the Orange County Assessor in these regards.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



James K. McManigal, Jr.
Staff Counsel III

JKM:jd

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Enclosure

cc: Honorable Bradley L. Jacobs, Orange County Assessor
Mr. John Hagerty, MIC:62
Mr. Dick Johnson, MIC:64
Mr. Jim Barga, MIC:64
Ms. Jennifer Willis, MIC:70

ANNOTATION

WELFARE EXEMPTION

Owner and Operator. Both owners and operators of properties for which the welfare exemption is claimed must be qualifying, nonprofit organizations organized and operated for religious, hospital, scientific, or charitable purposes and must meet all of the requirements for exemption before the exemption can be granted. Organizations using properties on a regular basis, such as daily, weekly, bi-weekly, or even monthly, can be operators of the properties, depending on the particular circumstances. For example, an organization using property daily would be regarded as an operator, as would an organization using property monthly several days each month. Similarly, organizations using properties on extended bases, such as a several days, a week, or several weeks at a time, can be operators of the properties, again depending on the particular circumstances. For example, an organization using property two or three days a month every quarter would be regarded as an operator.

As to uses of properties of exempt organizations by other exempt organizations on a one-time basis or on an infrequent basis, those organizations using the properties are not regarded as operators of the properties. For example, an organization using property once a year for part of a day or a day or using the property several times a year for limited periods on an irregular basis would not be regarded as an operator of the property and would not have to file a claim for exemption as an operator.

Such are matters of statutory interpretation, and such determinations are made on a case-by-case basis. All such organizations using the properties of exempt organizations, however, still must meet all the requirements for exemption, and the property must be used by the exempt organizations for qualifying purposes and activities. C 7/18/95.